IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION NO. 01-428-01
v.	:	
ANTHONY MILLER	:	CIVIL ACTION NO. 06-327

MEMORANDUM

ROBERT F. KELLY, Sr. J. JUNE 26, 2006

Before the Court is a Motion for Reconsideration (Doc. No. 159) filed by Anthony Miller ("petitioner") pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. Petitioner's motion requests reconsideration of a March 23, 2006 Order dismissing, without prejudice, his Motion to Vacate, Set Aside, Or Correct Sentence filed under 28 U.S.C. § 2255. For the reasons which follow, petitioner's motion for reconsideration is denied.

BACKGROUND

On January 25, 2006, the Clerk of this Court received petitioner's Motion to Vacate, Set Aside, or Correct Sentence (herein referred to as "Original § 2255 Motion") (Doc. No. 147) related to a May 8, 2002 judgment of conviction for possession with intent to deliver cocaine. See Orig. § 2255 Mot. at 1-2. In an Order filed February 6, 2006, the Court noted that, among other things, contrary to Rule 9.3(a) of the Local Rules of Civil Procedure and Rule 2 of the Rules Governing 28 U.S.C. § 2255 Proceedings in the United States District Courts, the Original § 2255 Motion was "not filed with the requisite current standard 28 U.S.C. § 2255 form prescribed by this court effective December 1, 2004," see Order filed 2/6/06, at 1. Accordingly,

it was ordered "that [petitioner] shall complete this court's current standard form as directed by Local Civil Rule 9.3(a) (that is, by setting forth his entire argument on the form itself, without recourse to any attachments) and return it to the Clerk of Court within thirty (30) days, or else this civil action shall be dismissed."[1] Id. at 1-2 (emphasis added).

On March 22, 2006, the Clerk of Court received petitioner's § 2255 motion filed on the current standard § 2255 form, but in violation of the clear language of the February 6, 2006 Order, petitioner "did not set forth his argument on the form in any way, but merely made reference to a memorandum of law," see Order filed 3/23/06 (emphasis added). Accordingly, by Order filed March 23, 2006, the § 2255 motion was dismissed without prejudice "on the grounds that [petitioner] ha[d] not complied with the clear and unambiguous language of this court's Order of February 6, 2006." Id.

Petitioner thereafter filed the present Motion for Reconsideration requesting that "this Court reconsider it's Order of March 23, 2006 and allow [him] to re-submit his 28 U.S.C. § 2255 motion." See Mot. for Reconsid. at 1-2. His motion represents that he "is not a legal license [sic] practitioner, and does not fully understand the intricacies of the legal standards." Id. at 1.

DISCUSSION

Rule 59(e) of the Federal Rules of Civil Procedure provides: "Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." Fed. R. Civ. P. 59(e). This "ten-day period 'is jurisdictional, and cannot be extended in the discretion of the

1. Petitioner appears to acknowledge that three copies of the proper § 2255 forms were sent to him along with a copy of the Feb. 6, 2006 Order. See Mot. for Reconsid. at 1.

district court.'" Williams v. Vaughn, 1998 WL 238466, at *1 (E.D. Pa. May 8, 1998) (quoting Adams v. Trustees of N.J. Brewery Employees' Pension Trust Fund, 29 F.3d 863, 870 (3d Cir. 1994)); see United States v. Fiorelli, 337 F.3d 282, 288 (3d Cir. 2003) (citing Fed. R. Civ. P. 6(b) (noting that Rule 6(b) precludes enlargement of the time for filing a motion under Rule 59(e)); Smith v. Evans, 853 F.2d 155, 157 (3d Cir. 1988).

Here, it is not clear that petitioner filed his motion within 10 days of the March 23, 2006 Order. Although his motion was marked "filed" on April 10, 2006, more than 10 days after the March 23rd Order, since petitioner is a pro se prisoner, his motion is deemed "filed" at the moment he delivers it to prison officials for mailing to the district court. See Fiorelli, 337 F.3d at 288-90; see also Smith, 853 F.2d at 161-62; Burns v. Morton, 134 F.3d 109, 112-13 (3d Cir. 1998) (applying prison mailbox rule to habeas petition). Petitioner does not allege when he delivered his motion to prison authorities for mailing, and he fails to indicate the date he signed it.[2] See Mot. for Reconsid. at 2.

Even assuming that he filed his motion in a timely fashion, relief is not warranted under Rule 59(e). "The purpose of reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999); see Fassl v. Our Lady of Perpetual Help Roman Catholic Church, 2006 WL 709799, at *2 (E.D. Pa. March 13, 2006). "Because federal courts have a strong interest in finality of judgments, motions for reconsideration should be granted sparingly." Id. (quoting Continental Casualty Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995)).

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2. Since the postmark on the envelope is dated April 7, 2006, he must have delivered his motion for mailing on or before that date.

A motion under Rule 59(e) of the Federal Rules of Civil Procedure requesting that a prior decision be altered or amended "must rely on one of three major grounds: '(1) an intervening change in controlling law; (2) the availability of new evidence [not available previously]; [or], (3) the need to correct clear error [of law] or prevent manifest injustice.'" Clemons v. United States, 2005 WL 2573353, at *1 (M.D. Pa. Oct. 12, 2005) (quoting North River Ins. Co. v. Cigna Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995) (citations omitted)); see Max's Seafood Café, 176 F.3d at 677 (citing North River Ins. Co.); Fassl, 2006 WL 709799, at *2. Here, under the circumstances of this case, petitioner fails to allege, let alone demonstrate, circumstances justifying relief under Rule 59(e).

While petitioner captioned his motion as one filed under Rule 59(e), "the function of the motion, and not the caption, dictates which Rule is applicable." Fiorelli, 337 F.3d at 287-88. "Although motions for reconsideration under Federal Rules of Civil Procedure 59(e) and 60(b) serve similar functions, each has a particular purpose." Id. at 288. Rule 60(b) provides:

> On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether theretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b) (emphasis added).

The decision to grant or deny relief pursuant to Rule 60(b) lies in the "sound discretion of

the trial court guided by accepted legal principles applied in light of all the relevant circumstances." United States v. Hernandez, 158 F. Supp.2d 388, 392 (D. Del. 2001) (quoting Ross v. Meagan, 638 F.2d 646, 648 (3d Cir. 1981)). "Relief under Rule 60(b)(6) 'is available only in cases evidencing extraordinary circumstances.'" Morris v. Horn, 187 F.3d 333, 341 (3d Cir. 1999) (quoting Reform Party of Allegheny County v. Allegheny County Department of Elections, 174 F.3d 305, 311 (3d Cir. 1999) (en banc)) (emphasis added); see also Hernandez, 158 F. Supp.2d at 392 (citing Moolenaar v. Government of the Virgin Is., 822 F.2d 1342, 1346 (3d Cir. 1987) (citations omitted)).

In the present case, as pointed out in the Order filed March 23, 2006, petitioner failed to comply with "the clear and unambiguous language of this Court's Order of February 6, 2006," see Order filed 3/23/06 (emphasis added), directing petitioner to "complete this court's current standard form as directed by Local Civil Rule 9.3(a) (that is, by setting forth his entire argument on the form itself, without recourse to any attachments)," see Order filed 2/6/06 (emphasis added). The February 6th Order warned him that failure to comply with the directions of the Court "shall" result in dismissal.[3] Id. (emphasis added). Even assuming petitioner's motion for reconsideration was timely filed, and whether the motion is treated as one filed under Rule 59(e) or Rule 60(b), petitioner fails to allege or demonstrate any circumstances warranting reconsideration of the order dismissing his § 2255 motion without prejudice. Accordingly,

3. It is noted that as with the § 2255 form previously submitted by petitioner, petitioner's present Motion for Reconsideration fails to set forth any claims challenging his underlying conviction or sentence; nor has he submitted a § 2255 motion along with his Motion for Reconsideration.

petitioner's Motion for Reconsideration is denied.[4] An appropriate Order follows.

4. Of course, since petitioner's § 2255 motion was dismissed "without prejudice," see Order filed 3/23/06 (emphasis added), he may submit another § 2255 motion, and any such motion would appropriately be treated as his first § 2255 motion, see Christy v. Horn, 115 F.3d 201, 208 (3d Cir. 1997) (habeas petition filed after dismissal without prejudice of prior petition is considered first habeas petition).

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O R D E R

AND NOW, this 26th day of June, 2006, upon consideration of the "Motion to Reconsider" (Doc. No. 159) filed by Anthony Miller ("petitioner"), for the reasons provided in the accompanying Memorandum, it is hereby ORDERED that petitioner's motion is DENIED.

BY THE COURT:

/s/ Robert F. Kelly
ROBERT F. KELLY
SENIOR JUDGE